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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term 1972
No. 72-1598

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

BELL AEROSPACE CO., DIVISION OF TEXTRON, INC.

On a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Motion for Leave to File Brief of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae and Amicus Curiae Brief.

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Motion for Leave to File Brief of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae.

It is hereby respectfully moved, pursuant to Rule 42 of the Rules of this Court, that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) be granted leave to file the accompanying brief *amicus curiae* in support of the Petitioner.

A letter of consent from the Petitioner has been filed with the Clerk. Respondent has declined to consent to the filing of a brief *amicus curiae*.

The UAW is an international labor union with a total membership of approximately 1,500,000 working men and women.

Initially, the UAW has an immediate interest in the outcome of this matter since one of its affiliated local unions is the certified collective bargaining representative for the employees in issue.

More importantly, however, the UAW has an acute interest in the resolution of the "managerial employee" issue since a determination that *all* "managerial employees" are not entitled to the protection of the National Labor Relations Act would seriously, adversely affect existing and planned UAW organizing campaigns.

More specifically, the UAW has made a philosophical and economic commitment to engage in an intensified effort to organize a substantial segment of the more than 11,500,000[1] professional and technical workers employed in this country.[2] In fact, the UAW

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[1]U.S. Census Bureau, *Statistical Abstract of the United States*, 1972, page 230.

[2]Indicative of this commitment is the following resolution which was passed at the UAW Constitutional Convention held during the spring of 1972:

"WHEREAS: The UAW has found strength in diversity. Time after time we have found that the combined power of production, skilled and other workers has worked to the advantage of each and to the benefit of the whole Union, and

WHEREAS: As we go to bargain with our employers, to participate in political campaigns and to fight for legislative justice, we find that the UAW would be greatly strengthened if we could include the resources and numbers of professional personnel, who stand in need of the strength they can gain from a powerful mass-based union devoted to improving the quality of life for its members and the whole society, and

WHEREAS: Many professionals are completely unorganized, while some are in relatively small associations and organizations, and

WHEREAS: Professionals, despite their years of specialized education, training and experience, face many of the same economic and social problems as production, skilled, office and technical workers. They, too, must reckon with unemployment, managerial tyranny, inadequate fringe bene-

has already initiated many campaigns to organize professional and technical workers, some of which are currently pending before the National Labor Relations Board.

A ruling by this Court that all employees who formulate, determine and effectuate company policies are not entitled to the protections of the Act, whether or not their duties are such that they would create a conflict of interest between their job responsibilities and their responsibilities to a labor organization, would effectively preclude the organization of most profes-

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fits and all of the other problems plaguing UAW members, and

WHEREAS: It seems clear that mounting threats to their security have convinced professionals that old attitudes and approaches will not solve their problems and they need to adopt more aggressive collective bargaining tactics, and

WHEREAS: We recognize that these professionals can make a great contribution to the common good and to the solution of their own problems by joining with us in the UAW, working together on common problems and, at the same time, pursuing solutions to their own special problems, and

WHEREAS: The UAW recognizes the need to unite in one great union those who do unskilled, skilled, technical, office and professional work so that the full strength of union may be brought to bear on common problems. The UAW also recognizes that, in addition to the interests shared with other workers, true professional workers have special needs and problems, now, therefore, be it

RESOLVED:

1. The International Executive Board is directed to intensify the UAW effort to organize professional personnel, with special emphasis on those who work in industries in which the UAW presently bargains.

2. The International Executive Board is authorized and empowered to negotiate with existing organizations of professionals with a view to bringing the membership of such organizations into the UAW.

3. The International Executive Board is authorized and empowered to take whatever action is required, including interim constitutional changes, to bring professionals into the UAW individually or in groups."

sional and many technical workers. This unprecedented result would occur because, by virtue of their expertise and the highly specialized nature of their work, professional and technical employees often are relied upon to participate in the formulation of company policies with respect to the technical aspects of the business. Thus, a sweeping ruling excluding all so-called "managerial employees" could result in denying hundreds of thousands of employees the right to organize, merely because they are more skilled and have greater expertise than the typical rank and file worker.

Therefore, because the UAW has committed its resources to the organization of professional and technical employees, its interest in the determination of this matter is manifest.

Conclusion.

For the foregoing reasons the UAW respectfully submits that its motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,

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Interest of the UAW.

The interest of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is set forth in the preceding motion.

Summary of the Argument.

The argument of the UAW consists of the following three interrelated contentions:

(1) The legislative history of the Taft-Hartley amendment to the Act indicates that Congress intended to exclude from the protections of the Act employees

who formulate certain types of company policy related to labor relations. The legislative history does not, however, indicate that Congress intended to exclude *all* employees who formulate *any* type of company policy, regardless of the overall significance of the policy being formulated. Thus, the policy enunciated by the Board in this case with respect to the treatment of so-called "managerial employees" is consistent with the legislative history.

(2) The current method of treating "managerial employees" adopted by the Board does not constitute a change in Board policy and is consistent with prior decisions of the Board and Courts. More specifically, a close analysis of these decisions indicates that subsequent to the enactment of the Taft-Hartley amendment the Board has endeavored to narrow its definition of "managerial employees" so as not to exclude employees who exercise discretion and are given responsibilities, yet who nevertheless do not actually constitute part of the "managerial hierarchy". In this sense, the current policy of the Board can be viewed as an attempt to further refine the definition of "managerial employees." Finally, since the refinements included in the current Board policy are entirely consistent with previously judicially approved criteria, the restated policy should be approved.

(3) The stated labor policy of the United States is to encourage collective bargaining. Furthermore, this policy is statutorily made applicable to professional employees as well as to nonprofessionals. Since profes-

sional and technical employees definitionally utilize discretion in the performance of their work, and since under the previously judicially accepted definitions of "managerial employees" the utilization of discretion is an indicia of managerial status, a refusal to implement the Board's current policy could result in most professional and technical workers being excluded from the protections of the Act. Thus, the effect of a sweeping ruling excluding all employees who qualify as "managerial" under the previously accepted definitions would be contrary to the labor policies of this country in that professional and technical employees would effectively be precluded from bargaining collectively.

ARGUMENT.

I.

The Treatment of "Managerial Employees" by the Board Is Consistent With the Legislative History and With Prior Judicial Interpretations of the Act.

The Board, in the proceedings below,[1] ruled that so called "managerial employees" are within the statutory definition of "employee" and are therefore entitled to the protections of the National Labor Relations Act, unless they exercise such broad managerial discretion as to necessarily involve the determination of matters affecting employment and employment policies. The effect of this interpretation of Section 2(3) of the Act (the statutory definition of the term "employee") is consistent with the legislative history of the Act and with prior judicial interpretations of Section 2(3).

A. The Legislative History Does Not Indicate That Congress Desired to Exclude From the Protections of the Act All Employees Who Formulate, Determine and Effectuate Company Policies.

As will subsequently be more fully elaborated, the UAW contends that the "managerial employee" issue arises not from a dispute concerning the propriety of a policy of the National Labor Relations Board, but rather has emerged due to a historic (and semantic) problem in defining the term "managerial employee".

In this respect, the legislative history of the Taft-Hartley amendment to the Act does not provide any clarification of the term because "managerial employees"

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[1] *Texton Inc. (Bell Aerospace)*, 190 NLRB No. 66 (1971), 196 NLRB No. 127 (1972) and 197 NLRB No. 30 (1972).

were never referred to as such within the proposed bills or in the Congressional debates. Rather, what can be gleaned from the legislative history is an indication as to which employees Congress intended to exclude from the protections of the Act.

The legislative history is clear that the primary Congressional intent in statutorily redefining the term "employee" was to preclude supervisors from unionizing.[2]

Although the bill originally passed by the House of Representatives would also have specifically excluded labor relations, time-study, police, guard personnel and confidential employees in addition to supervisors[3], no reference was ever made in either the House or the Senate to a possible exclusion of *all* employees who formulate, determine and effectuate company policies. In fact, the only indication that Congress intended any employees other than supervisors to be excluded from the protections of the Act, is the following statement contained in the report of the Conference Committee:

> "In the case of persons working in the labor relations, personnel and employment depart-

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[2]In *Packard Motor Co.*, 64 NLRB 1212 (1945) the Board approved a bargaining unit comprised of supervisors. The Supreme Court affirmed in *Packard Motor Co. v. NLRB*, 330 U.S. 485 (1947).

The legislative history concerning the redefinition of the term "employee" clearly indicates that the primary purpose of the redefinition was to reverse the holding of the Supreme Court in *Packard Motor Co. v. NLRB*, *supra*. See, *e.g.*, H. Rept. No. 245, 80th Cong., 1st Sess., 13-17, 1 Legislative History of the Labor Management Relations Act, 1947 (hereafter "Leg. Hist.") 304-308; S. Rept. No. 105, 80th Cong., 1st Sess., 3-5; 1 Leg. Hist., *supra*, at 409-411; 93 Cong. Rec. 3553, 1 Leg. Hist., *supra*, at 646-647; 93 Cong. Rec. 3952, 2 Leg. Hist., *supra*, at 1008-1009; 93 Cong. Rec. 4804, 2 Leg. Hist., *supra*, at 1303-1304.

[3]Sec. 2(12) of H.R. 3020, 80th Cong., 1st Sess., 10-11, 1 Leg. Hist., *supra*, at 167-168.

ments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect."[4]

In conclusion, although the legislative history of the Taft-Hartley amendment to the Act would support a contention that Congress intended to exclude from the protections of the Act employees who formulate and implement certain, specific kinds of company policy—*i.e.*, labor relations policies—the legislative history *does not* support a contention that Congress intended to exclude *all* employees who formulate, determine or effectuate *any* type of company policy.

B. The Policy Enunciated by the Board With Respect to "Managerial Employees" Merely Constitutes a Correlation, Integration and Logical Extension of Prior Judicial Interpretations of the Act.

In the proceedings before the Court of Appeals for the Second Circuit[5] the Respondent contended, and the Board evidently concurred, that the policy enunciated by the Board with respect to the treatment of so-called "managerial employees" constituted a reversal of prior Board policy.[6] As previously alluded to, the UAW views the situation somewhat differently.

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[4]H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 35, 1 Leg. Hist., *supra*, at 539.

[5]*Bell Aerospace Company Div. of Textron, Inc. v. NLRB*, 475 F.2d 485 (2d Cir. 1973).

[6]*See generally, Bell Aerospace Co. Div. of Textron, Inc. v. NLRB, id.*, at 494-495.

The UAW contends that a close analysis of the evolution of the treatment of "managerial employees" by the Board and Courts demonstrates that the policy enunciated by the Board in this case is actually consistent with the prior policy.

Such an analysis indicates that subsequent to the enactment of the Taft-Hartley amendment to the Act the Board encountered semantic problems in its attempt to delineate those employees it would exclude from the protections of the Act as "managerial employees". In this sense, the current policy of the Board can be seen as a further attempt to narrow the previously ambiguous definition of "managerial employees", a redefinition which is actually entirely consistent with previous judicially accepted definitions of "managerial employees".

In its initial decision regarding this issue subsequent to the enactment of the Taft-Hartley amendment the Board stated its policy regarding managerial employees as follows:

> "We have in the past, and before the passage of the recent amendments to the Act, recognized and defined as 'managerial' employees, *executives* who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and have excluded such managerial employees from bargaining units. . . . We believe the Act, as amended, contemplates the continuance of this practice." (Emphasis supplied.)
>
> *Palace Laundry Dry Cleaners Corp.*, 75 NLRB 320 (1947).

Contrary to the contentions raised on appeal by the Respondent, the UAW contends that the import of this

definition of excludable "managerial employees" was that *executives, i.e.*, those persons responsible for making the principal administrative decisions of the company, be excluded. This policy statement does not support a contention that the Board intended to exclude *all* employees who formulate and effectuate *any* company policy, regardless of the overall insignificance of the policy being determined or the position within the managerial hierarchy of the person making the decision.

In any event, the ambiguity of this early definition of "managerial employees" is self-evident. More specifically, a definite set of criteria delineating the scope of the definition of "executives" or "managerial employees" was not established.

Rather, the Board tended to proceed on a case-by-case basis using what can only be described as its "intuitive sense of the situation" in determining which employees were executives to be excluded as "managerial employees". In most instances, after restating its ambiguous definition, the Board would proceed to state which employees qualified as "managerial" without any seemingly real clarification of its rationale or consistency with the criteria it adopted. See, *e.g.*, *AFL-CIO*, 120 NLRB 969, 973 (1958).

The Board was able to proceed in this *ad hoc* fashion since in most cases there really was little question as to which employees were "executives" and which were "rank and file factory workers". More specifically, since during this period of time (prior to the mid-1960's) most unions were concentrating their efforts towards organizing blue collar workers—most of whom had no responsibility other than the physical perform-

ance of their job and who did not exercise independent discretion in their work—"executives" or "managerial employees" were easily discernible.

However, with the change in the complexion of industry from an "industrial" orientation to a "technological" orientation, the previously acute dichotomy between management and nonmanagement employees began to diminish. As unions began to organize highly skilled employees who were given substantial responsibilities and whose work required the utilization of discretion, the "executives formulating company policy" test became an unworkable tool for discerning which employees were actually part of the managerial hierarchy.

Consequently, in an apparent attempt to reestablish a workable test to delineate those employees whom the Board intuitively believed were not "executives", despite the fact that they utilized discretion and were responsible for making minor decisions, the Board gradually redefined its concept of "managerial employees" by enumerating specific criteria.

Finally, in *Retail Clerks v. NLRB*, 336 F.2d 642 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 1017 (1967), the Board's definitional policy-standard was judicially clarified as consisting of two primary tests:

> "The Board has not developed clear standards for determining what is a managerial employee; there seem, however, to be two tests. The first is whether, even if they do not supervise other workers, *their position with the employer presents a potential conflict of interest between the employer and the workers.* This strand of the managerial employee test is often phrased in a more

conclusory manner, i.e., that the employee is closely related to or aligned with the management; such a determination, however, also seems to turn on the possibility of a conflict of interest arising.

"The Board also excludes from the protection of the Act, as managerial employees, 'those who formulate, determine, and effectuate an employer's policies', and *those who have discretion in the performance of their jobs,* but not if the discretion must conform to an employer's established policy." (Emphasis supplied; citations omitted).

As is evident from this summary of the Board's position, the Board had evolved two determinants which were not reflected in its initial definitions and policy statements:

(1) The conflict of interest, or alignment test, and,

(2) The discretionary formulation of company policy test.

In addition to codifying the tests to be applied in determining managerial status, the *Retail Clerks* Court stated the rationale for excluding managerial employees:

"The rationale for this Board policy, though unarticulated, seems to be the reasonable belief that Congress intended to exclude from the protection of the Act those who comprised a part of 'management' or were allied with it on the theory that they were the ones from whom the workers needed protection."

Clearly, prior to the judicial restatement of its policy in *Retail Clerks v. NLRB, supra,* the Board had attempted to narrow its definition of "managerial em-

ployees" by establishing specific criteria in order to assure that only "those employees from whom the workers needed protection" would be excluded.

It soon became apparent, however, that even the *Retail Clerks* test could not adequately distinguish "executives" or true "managerial employees". More specifically, an employee might, because of his particular expertise, work closely with management officials, yet not actually be part of the managerial hierarchy or in a position where his interests would be opposed to those of other workers.

Consequently, the Board continued to enumerate additional criteria and thereby further narrow its definition of "managerial employees". In particular, the "alignment test" was redefined and subsequently judicially restated in *Journal-Register, Inc. v. NLRB*, 412 F.2d 37 (7th Cir. 1969) as follows:

> "The alignment test is essentially a narrow one in the sense that unless an employee is substantially involved in his employer's labor policies his relationship with management is not one of a managerial employee."

Interestingly, the *Journal-Register* Court apparently did not decipher a direct relationship between the "alignment" and "discretionary formulation of company policies" tests. This direct relationship can be pointed out by noting that, whereas an employee could be aligned with management in such a manner that his interests would not be opposed to those of other workers, similarly an employee could be responsible for formulating certain types of minor company policies, yet not be in a position where his loyalties would necessarily be divided between his employer and a

union. In other words, if the policies the employee is formulating do not directly affect employment matters, the effect of the decision on union co-workers would not be a consideration in the formulation of the policy and therefore no conflict of interests would arise.

Thus, it would have been logical for the Board and/or the Courts to further limit the definition of "managerial employees" so as to include only those employees who formulate labor relations or other policies which have a direct effect on employment matters. Such a redefinition would have, of course, been an entirely consistent extension of the definitional test approved in *Journal-Register Inc. v. NLRB, supra.*

However, rather than further refining its definition of "managerial employees", the Board adopted a different approach in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83 (1970).

In that case, the Board held that whether or not an employee would have qualified as managerial under existing definitions, unless he formulated "*policy with respect to employee relations matters*" a conflict of loyalties would not arise as a result of his engaging in "concerted activity". The Board further held that there was therefore no logical rationale for concluding that such employees did not qualify as "employees" entitled to the protections of the Act.[7]

In the initial Board proceedings in this case[8], the Board merely readopted and reclarified its policy. More

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[7]The decision of the Board was subsequently reversed in *North Arkansas Electric Cooperative v. NLRB*, 446 F.2d 602 (8th Cir. 1971). The rationale of the opinion of the Circuit Court is, however, somewhat unclear.

[8]*Textron Inc. (Bell Aerospace)*, 190 NLRB No. 66 (1971) and 196 NLRB No. 127 (1972).

specifically, the Board ruled that all employees, irrespective of whether they would have qualified as "managerial" under its previous tests, were entitled to the protections of the Act unless they formulated labor relations policy or exercised "such broad managerial discretion as to necessarily involve the determination of matters affecting employment or employment policies." The Board further explicitly stated that the formulation of other types of policy was not a sufficient basis for denying employees the protections of the Act.

There are, as previously stated, two ways to view this policy of the Board. Initially, the holding in this case can be viewed as a change in policy since it purports to include "managerial employees" within the protections of the Act while the Board had previously excluded such employees.

The policy can, however, also be viewed as a further refinement of the term "managerial employees". In other words, rather than saying that "managerial employees" shall be accorded the protections of the Act unless they perform the specified functions (*i.e.*, formulation of the enumerated types of policies), the Board could properly have stated that only those employees who perform those specific functions shall be defined as excludable "managerial employees".

It is interesting to note that this change in semantics—*i.e.*, new method of approaching the "managerial employee" issue—evidently had a profound effect upon the decision in this case by the Court of Appeals. ***Bell Aerospace Company Division of Textron, Inc. v. NLRB***, 475 F.2d 485 (2d Cir. 1973). More specifically, the Court denied enforcement because it felt it could not be certain that the Board's decision rested

upon a determination that the buyers were "not sufficiently high in the [employer's] hierarchy to constitute 'managerial employees' ", rather than:

> "[on] its new and, in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met the 'fundamental touchstone' of including 'determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization'. . . ."

475 F.2d at 494-495.

Thus, evidently, had the Board stated that it was redefining "managerial employees" so as not to include those employees who were not sufficiently high in the managerial hierarchy, and that according to the redefinition the buyers in issue did not constitue "managerial employees", the Court would have granted enforcement.

In other words, the effect of the allegedly new policy of the Board with respect to so-called "managerial employees" is identical to the effect that would have been created had the Board merely redefined and narrowed its concept of "managerial employees" consistent with previous judicially accepted definitions.

The UAW respectfully submits that the question in issue is too critical to the rights of hundreds of thousands of employees to turn upon such a flimsy semantic distinction. Rather, the UAW submits that this Honorable Court should look beyond the mere words of the policy of the Board and analyze the effect of the Board's decision in this case. Finally, the UAW submits that such an analysis would indicate, as outlined above,

that the decision in this case is in fact consistent with previous decisions of the Board and Courts and constitutes an instance of the Board properly utilizing its specialized expertise in an effort to evolve rules which implement the intent of Congress.

II.

A Sweeping Decision Which Would Exclude Hundreds of Thousands of Professional and Technical Workers From the Protections of the Act Would Be Contrary to the Labor Policies of This Country.

The labor policy of the Government of the United States, as stated within Section 1 of the Act, clearly is to encourage collective bargaining between labor and management. Furthermore, Congress has also manifested its intent that professional workers be encouraged to bargain collectively with their employers; as indicated by the specific definition of professional employees in Section 2(12) and the particular provisions in Section 9(b) respecting the organization of professionals.

Nevertheless, a sweeping decision excluding from the protections of the Act all "managerial employees" as defined prior to the decisions in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83 (1970), and in this case would have an effect contrary to the stated labor policies.

More specifically, although there is no evidence before the Court which would substantiate this contention since neither professional nor technical workers are in issue, many highly specialized employees are often called upon to assist in the formulation of company policy relating to their field of specialization. Thus. a substantial proportion of these employees would

necessarily be excluded as "managerial" pursuant to the Board's previous definitions, and since collective bargaining would therefore be precluded, the labor policies of our government would be circumvented.

It should be noted that if the professional or technical employee actually formulates a major company policy which will affect employment or employment matters, the employee would properly be excluded from the protections of the Act even under the current Board policy. If, however, as is more often the case, the employee is merely providing technical information which affects the policy determination by higher "management" officials, or if the employee is merely formulating technical policy which is insignificant as far as employment matters are concerned, the employee would be improperly excluded from the protections of the Act pursuant to previous definitions of "managerial employees", and his exclusion would undermine the stated labor policies.

Perhaps the problem of the overlap between the existing (prior to *North Arkansas Electric*) definition of "managerial employees" and the ordinary work functions of professional and technical workers can best be demonstrated by comparing that definition with the statutory definition of professionals as stated in Section 2(12) of the Act. It immediately becomes apparent that there is an irreconcilable conflict in that both definitions purport to apply to employees utilizing "independent discretion".

Thus, if the "managerial employee" definition is literally applied to professionals they must be excluded because they exercise independent discretion, even though Congress specifically provided that employees

who exercise independent discretion constitute professionals and are to be accorded the protections of the Act.

Finally, the magnitude of the "managerial employee" issue in this case can best be demonstrated by quoting statistics which indicate the potential effect upon this country's labor policies which a sweeping ruling could have.

In 1947 when the Taft-Hartley amendment was enacted, "professional, technical and kindred workers" comprised a relatively small proportion of the work force, approximately 6.6 percent.[9] In comparison, non-professional/technical employees protected by the Act comprised approximately eighty (80) percent of the work force.[10]

By 1972 the change in industry's orientation from "industrial" to "technological" had resulted in a rapid increase in the proportion of professional employees to approximately 14.3 percent of the total labor force.[11] Furthermore, this growth pattern is expected to continue in the future:

> "PROFESSIONAL, TECHNICAL AND KINDRED. Employment growth in these occupations has outdistanced that in all other major occupational groups in recent decades. From less than a million in 1890, the number of these workers has grown to 10.3 million in 1968. And requirements for these occupations will continue to lead other

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[9]*Manpower Report,* 1966, page 165; reflecting figures compiled by the Bureau of Labor Statistics.

[10]*Id.* The remaining employees were agricultural and therefore statutorily excluded from the provisions of the Act.

[11]U.S. Census Bureau, *Statistical Abstract of the United States,* 1972, page 230.

> categories between 1968 and 1980, increasing half again in size, which is twice the employment increase among all occupations combined. at 15½ million in 1980, employment in this occupational group will represent 16.3 percent of total employment, up from 13.6 percent in 1968."[12]

Thus, a sweeping ruling which would affect professional and technical employees could exclude up to one-sixth of the labor force from the protections of the Act.

In conclusion, the UAW respectfully submits that such an effect on this substantial a segment of the labor force would clearly be contrary to the policies stated in the Act, and would be contrary to the underlying intent of Congress in enacting the Taft-Hartley amendment.

Conclusion.

The decision of the Court of Appeals should be reversed and the Court should grant enforcement to the order of the Board.

Respectfully submitted,

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[12]U.S. Department of Labor, Bureau of Labor Statistics, *The U.S. Economy in 1980,* page 23.